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ADELLA VINEYARDS, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

12 ADELLA VINEYARDS, LLC, a California limited liability company,

Plaintiff,

15 DOMAINE DELLA DALE LLC, a California
16 limited liability company; DAVID W. HEJL,
an individual; and DOES 1-10, inclusive.

Defendants.

CASE NO.

**COMPLAINT FOR TRADEMARK
INFRINGEMENT AND FALSE
DESIGNATION OF ORIGIN UNDER
FEDERAL LAW, TRADEMARK
INFRINGEMENT UNDER STATE LAW,
AND TRADEMARK INFRINGEMENT
AND UNFAIR COMPETITION AT
COMMON LAW**

DEMAND FOR JURY TRIAL

19 Plaintiff Adella Vineyards, LLC ("Plaintiff") brings this action against Domaine Della
20 Dale LLC and David W. Hejl (individually and collectively, "Defendants"), for trademark
21 infringement and false designation of origin under federal law, trademark infringement
22 under state law, and trademark infringement and unfair competition at common law,
23 seeking, among other things, damages, injunctive relief, and cancellation of a federal
24 trademark registration.

JURISDICTION AND VENUE

26 1. This Court has subject matter jurisdiction over the claims in this action
27 under Title 28 of the United States Code, Sections 1331 (federal question) and 1338(a)
28 (Acts of Congress relating to trademarks) and Title 15 of the United States Code,

1 Sections 1121 et. seq. (Lanham Act). Among other things, the claims in this action relate
 2 to questions regarding federal trademark law and a federal trademark registration.
 3 Additionally, this Court has jurisdiction over Plaintiff's state-law and common-law claims
 4 under Title 28 of the United States Code, Section 1338(b) (unfair competition joined with
 5 a substantial and related claim under trademark law) and Section 1367(a) (supplemental
 6 jurisdiction).

7 2. Venue is proper in this District under Title 28 of the United States Code,
 8 Section 1391(a)(2) and (b)(2). Namely, and among other things, a substantial part of the
 9 events or omissions giving rise to the claims in this action occurred and continue to occur
 10 in this judicial district; and a substantial part of the harm alleged herein was directed to
 11 and felt by Plaintiff within this District.

INTRADISTRICT ASSIGNMENT

13 3. Intradistrict assignment of this intellectual property action (trademark) is
 14 proper on a district-wide basis pursuant to Civil Local Rule 3-2(c).

PARTIES

16 4. Plaintiff Adella Vineyards, LLC is a limited liability company organized and
 17 existing under the laws of the State of California, with offices at 6552 Red Winery Road,
 18 Geyserville, California 95441, in Sonoma County, California.

19 5. Defendant Domaine Della Dale LLC is a limited liability company organized
 20 and existing under the laws of the State of California, with offices at 4757 Woodview
 21 Drive, Santa Rosa, California 95405, in Sonoma County, California.

22 6. On information and belief, Defendant David W. Hejl is an individual residing
 23 in the State of California, who lives and works in Sonoma County, California. On
 24 information and belief, Hejl is the Managing Member of Domaine Della Dale LLC, as well
 25 as its "Proprietor and Winemaker," and as such, exercised ownership and active and
 26 conscious control over Domaine Della Dale LLC regarding all matters alleged herein.
 27 Accordingly, on information and belief, Hejl is directly liable for the activities complained
 28 of herein; and he is also contributorily and vicariously liable for Domaine Della Dale LLC's

1 | activities complained of herein.

2 7. Plaintiff is unaware of the true names and capacities of those Defendants
3 sued herein as DOES 1 through 10, inclusive, and therefore sues these Defendants by
4 such fictitious names. Plaintiff will amend this complaint to allege their true names and
5 capacities when ascertained. Each of the Defendants, including DOES 1 through 10,
6 inclusive, is in some manner responsible, in whole or in part, for the matters alleged
7 herein; and Plaintiff's injuries as alleged in this action were proximately caused by their
8 conduct.

GENERAL ALLEGATIONS

10 8. Plaintiff Adella Vineyards offers and sells wine under the mark ADELLA and
11 has been doing so starting at least as early as early as June 2009. Its vineyards are
12 located in Sonoma County, California. The labels on Adella's wine bottles show the name
13 ADELLA prominently as the name and brand of the wine. Adella Vineyards named itself
14 and its wine after one of its proprietors, whose first name is Della, with ADELLA intended
15 as the Italian version of DELLA.

16 9. Adella Vineyards owns the California state registration for the mark
17 ADELLA in connection with "wine," Registration No. 113846, which registration first
18 issued on August 12, 2009. This registration is in full force and effect (and has been
19 throughout all times mentioned herein).

20 10. Defendant Domaine Della Dale LLC offers and sells wine under the mark
21 DELLA. Domaine Della Dale first filed a fictitious business name statement to do
22 business under the name DELLA WINES in 2014 and first began using the mark DELLA
23 for wine no earlier than 2014. Domaine Della Dale is located in Sonoma County,
24 California; and on information and belief, its winery or the grapes from which its wine is
25 produced are located in Sonoma County, California. The labels on Domaine Della Dale's
26 wine bottles do *not* use the name DOMAINE DELLA DALE; rather, they show the name
27 DELLA by itself as the name and brand of the wine. The labels also say "Sonoma Coast,"
28 presumably to indicate the geographic origin of the grapes underlying the wine.

1 11. Domaine Della Dale filed an application for federal registration of the mark
2 DELLA for "wine." In that application, Domaine Della Dale and Hejl swore under penalty
3 of law that "no other person, firm, corporation, or association has the right to use the
4 mark [DELLA] in commerce, either in the identical form thereof or in such near
5 resemblance thereto as to be likely, when used on or in connection with the
6 goods/services of such other person, to cause confusion, or to cause mistake, or to
7 deceive." By this application, Domaine Della Dale and Hejl sought nationwide exclusive
8 rights to use DELLA (or any confusingly similar name) in connection with wine.

9 12. On or about October 30, 2014, Adella Vineyards, through its counsel, sent a
10 letter to Domaine Della Dale advising of Adella Vineyards' prior use and rights in the mark
11 ADELLA and Adella Vineyards' registration of the mark ADELLA; the letter also noted the
12 close similarity of DELLA to ADELLA, the goods under the marks being the same, and
13 the companies operating in the same geographic region. Despite this notice, on
14 information and belief, Domaine Della Dale continued offering and selling wine under the
15 mark DELLA. Furthermore, on or about November 3, 2014, Domaine Della Dale and Hejl
16 filed a statement of use of the mark DELLA in connection with wine to support Domaine
17 Della Dales' application to register the mark—and swore again under penalty of law that
18 "no other person has the right to use the mark [DELLA] in commerce, either in the
19 identical form or in such near resemblance as to be likely, when used on or in connection
20 with the goods/services of such other person, to cause confusion or mistake, or to
21 deceive." On or about January 6, 2015, the Domaine Della Dale's application attained
22 registration, Registration No. 4668250.

23 13. The marks ADELLA and DELLA are nearly identical, visually and
24 phonetically, with only the one-letter difference. Likewise, the commercial impressions of
25 the two marks are nearly identical, with ADELLA being an Italian version of DELLA and
26 with many published sources indicating that the two are closely-related names or
27 variations of the same name or that one name is the abbreviation of the other. In turn, the
28 goods being offered and sold by Plaintiff and Defendants under ADELLA and DELLA are

1 identical—wine—and among other things, both Plaintiff on the one hand and Defendants
2 on the other hand focus specifically on red wine.

FIRST CLAIM FOR RELIEF

Trademark Infringement and False Designation of Origin

under Federal Law (15 U.S.C. § 1125(a))

6 14. Plaintiff restates and re-avers the allegations of Paragraphs 1 through 13,
7 inclusive, as if set forth here in full as part of this claim for relief.

8 15. The above-described use by Defendants (and each of them) of the mark
9 DELLA in connection with wine constitutes trademark infringement and false designation
10 of origin, under Title 15 of the United States Code, Section 1125(a), as to the goods that
11 Defendants (and each of them) offer or sell in interstate commerce. Among other things,
12 Defendants' use of the mark DELLA is likely to cause confusion, mistake, or deception as
13 to the affiliation, connection, or association of Defendants' wine with Plaintiff's wine.

14 16. As a result, Plaintiff has been damaged, and unless Defendants (and each
15 of them) are enjoined, will continue to be irreparably damaged.

16 17. Defendants (and each of them) committed the above-described acts
17 willfully, and under the circumstances of this case, the Court should award a multiplier of
18 damages of up to three times under Title 15 of the United States Code, Section 35. This
19 is also an exceptional case under that Section 35, thereby entitling Plaintiff to its
20 attorneys' fees.

21 18. Furthermore, Defendant Domaine Della Dale LLC is not entitled to its
22 aforementioned federal registration of the mark DELLA; and Plaintiff further requests
23 Domaine Della Dale's aforementioned federal registration be canceled, under Title 15 of
24 the United States Code, Section 1119.

SECOND CLAIM FOR RELIEF

Trademark Infringement under State Law

(California Business and Professions Code § 14245)

28 ||| 19. Plaintiff restates and re-avers the allegations of Paragraphs 1 through 18,

1 inclusive, as if set forth here in full as part of this claim for relief.

2 20. The above-described use by Defendants (and each of them) of the mark
 3 DELLA in connection with wine constitutes trademark infringement under California
 4 Business and Professions Code Section 14245. Among other things, Defendants' use of
 5 the mark DELLA is likely to cause confusion, mistake, or deception as to the affiliation,
 6 connection, or association of Defendants' wine with Plaintiff's wine.

7 21. As a result, Plaintiff has been damaged, and unless Defendants (and each
 8 of them) are enjoined, will continue to be irreparably damaged.

9 22. In doing the things described here, Defendants (and each of them) acted
 10 with malice, oppression, and fraud, as defined in Civil Code section 3294(c), and willfully
 11 and with the intent to cause injury to Plaintiff. Defendants (and each of them) are
 12 therefore guilty of malice, oppression, and fraud in conscious disregard of the rights of
 13 Plaintiff, thereby warranting an assessment of punitive damages in an amount
 14 appropriate to punish Defendants (and each of them) and deter others from engaging in
 15 similar conduct.

16 23. Furthermore, Defendant Domaine Della Dale LLC is not entitled to its
 17 aforementioned federal registration of the mark DELLA; and Plaintiff further requests
 18 Domaine Della Dale's aforementioned federal registration be canceled, under Title 15 of
 19 the United States Code, Section 1119.

THIRD CLAIM FOR RELIEF

Trademark Infringement and Unfair Competition at Common Law

23 24. Plaintiff restates and re-avers the allegations of Paragraphs 1 through 23,
 24 inclusive, as if set forth here in full as part of this claim for relief.

25 25. The above-described use by Defendants (and each of them) of the mark
 26 DELLA in connection with wine constitutes trademark infringement at common law.
 27 Among other things, Defendants' use of the mark DELLA is likely to cause confusion,
 28 mistake, or deception as to the affiliation, connection, or association of Defendants' wine

1 with Plaintiff's wine.

2 26. The above-described use by Defendants (and each of them) of the mark
 3 DELLA in connection with wine permits Defendants to misappropriate and unfairly trade
 4 upon the valuable goodwill and reputation of Plaintiff Adella Vineyards and will subject
 5 the goodwill and reputation in Plaintiff's ADELLA mark to the hazards and perils attendant
 6 upon the business activities of Defendants (and each of them), activities over which
 7 Plaintiff has no control.

8 27. As a result, Plaintiff has been damaged, and unless Defendants (and each
 9 of them) are enjoined, will continue to be irreparably damaged.

10 28. In doing the things described here, Defendants (and each of them) acted
 11 with malice, oppression, and fraud, as defined in Civil Code section 3294(c), and willfully
 12 and with the intent to cause injury to Plaintiff. Defendants (and each of them) are
 13 therefore guilty of malice, oppression, and fraud in conscious disregard of the rights of
 14 Plaintiff, thereby warranting an assessment of punitive damages in an amount
 15 appropriate to punish Defendants (and each of them) and deter others from engaging in
 16 similar conduct.

17 29. Furthermore, Defendant Domaine Della Dale LLC is not entitled to its
 18 aforementioned federal registration of the mark DELLA; and Plaintiff further requests
 19 Domaine Della Dale's aforementioned federal registration be canceled, under Title 15 of
 20 the United States Code, Section 1119.

PRAAYER FOR RELIEF

22 Plaintiff Adella Vineyards, LLC prays for judgment against Defendants Domaine
 23 Della Dale, LLC and David W. Hejl (collectively, "Defendants") as follows:

24 1. For damages against Defendants (and each of them), including without
 25 limitation in the amount of their profits and compensatory damages for the injuries
 26 sustained by Plaintiff, directly or indirectly, in consequence of the acts and omissions
 27 described herein, according to proof at trial;

28 2. For an order that Defendants (and each of them) be permanently enjoined

1 and restrained from directly or indirectly:

- 2 a. Using any mark comprised of including the term DELLA or ADELLA
3 (or any visual, phonetic, or foreign-language equivalent of DELLA or
4 ADELLA) in connection with wine or any wine-related products or
5 services;
- 6 b. Using any trade practices, including without limitation those
7 complained of herein, which tend to unfairly compete with or injure
8 Plaintiff, its business, and the goodwill pertaining thereto; or
- 9 c. Applying to register, maintaining an application for registration,
10 registering, or maintaining a registration for any mark comprised of or
11 including the term DELLA (or any visual, phonetic, or foreign-
12 language equivalent of DELLA or ADELLA) in connection with wine
13 or any wine-related products or services.

14 3. For an order canceling Defendant Della Domaine Dale's federal trademark
15 registration, Registration No. 4668250;

16 4. For treble damages under 15 U.S.C. § 1117(b) and for exemplary or
17 punitive damages as may be allowed by law;

18 5. For its costs and attorneys' fees as may be allowed by law; and

19 6. For such other and further relief as the Court may deem just and proper.

20 DATED: February 5, 2015

21 HANSON BRIDGETT LLP

22 By: _____ /s/ Garner K. Weng

23 GARNER K. WENG
24 CHRISTOPHER S. WALTERS
25 JANIE LIN THOMPSON
26 Attorneys for Plaintiff
27 ADELLA VINEYARDS, LLC

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff Adella Vineyards, LLC hereby demands a trial by jury of all claims so
3 triable.

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5 DATED: February 5, 2015

HANSON BRIDGETT LLP

6

7 By: _____ */s/ Garner K. Weng*

8 GARNER K. WENG
9 CHRISTOPHER S. WALTERS
JANIE LIN THOMPSON
10 Attorneys for Plaintiff
ADELLA VINEYARDS, LLC

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